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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 252nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 3 May 1996, at 3.00 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.252.

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The public part of the meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of China (continued) (CAT/C/20/Add.5)

1. At the invitation of the Chairman, the delegation of China took places at the Committee table.

2. Mr. WU Jianmin (China) said that, unfortunately, misconceptions about China were both widespread and deep-rooted. Thus, in 1989 and 1990, many commentators had stated that the Government was about to collapse and that the economy was on the verge of bankruptcy. In fact, over the past five years, the country's average annual economic growth had been some 11 per cent, a higher rate than at any time in the previous century. The goal set for the modernization programme had been to quadruple China's 1980 GNP by the year 2000, a goal that had already been attained in 1995.

3. That did not mean that everything in the country was perfect: despite the tremendous progress made, many problems remained. However, it did not follow that all assertions made about the country were necessarily well-founded. Thus, it had been suggested that, because of Deng Xiaoping's age, the country must be going through a period of transition and that its political stability must be in doubt. In fact, however, the succession issue had already been resolved.

4. Misunderstandings about China was partly due to communication failures, partly to the media's preference for bad news and partly to bias. Members of the Committee had quoted from reports by Amnesty International, but that body was known to be politically motivated. Among China's population of 1.2 billion there were bound to be some who were not satisfied with the Government, but undue weight was being given to the views of so-called dissidents. The constant criticisms of China made by non-governmental organizations (NGOs) constituted an abuse of their privileged status.

5. What was needed was a dialogue between China and the rest of the world. That was why he welcomed the opportunity to answer the Committee's questions and to explain the true situation in his country.

6. Replying to a question that had been asked concerning the definition of torture in Chinese domestic legislation, he said that the National People's Congress had to approve the accession of China to international legal instruments. Once approved, such an instrument was binding upon the Government, which was obliged to incorporate its provisions into domestic law, the international instrument always taking precedence in the event of any discrepancy. When, however, China entered reservations to an international instrument, the relevant provisions were not binding. That general principle held good for the Convention against Torture.

7. Torture was regarded as a serious crime in China and was a violation of the Constitution, which stipulated that the personal rights, private freedom, and personal dignity of citizens were inviolable. The Constitution also

provided that no citizen could be arrested without the approval of a procuratorate, a people's court, or a public security organ, and forbade the humiliation or slander of any citizen.

8. In addition, the Criminal Law, which contained a definition of torture that complied with article 1 of the Convention, prohibited and penalized torture. Since the Convention did not, however, set out punishments for particular acts of torture, the relevant organs were obliged to rely on domestic legislation for the determination of appropriate sentences. Hence the absence of the word "torture" from Chinese domestic law.

9. The Criminal Law also provided for the protection of the personal and democratic rights of citizens, in conformity with the terms of article 1 of the Convention, and penalized the violation of those rights. It forbade extorting confessions under torture, and established that, if harm was caused to the personal integrity of the person tortured, the individual responsible - usually a State official - was liable to a fixed or an indefinite term of imprisonment, and could in serious cases be sentenced to death.

10. It also forbade illegal detention, providing that, if a detainee was beaten or humiliated, the individual responsible was liable to imprisonment for not more than 3 years and that, if the detention caused physical damage, such individual was liable to imprisonment for 3 to 10 years. If the detainee died, the individual responsible could be sentenced to imprisonment for a fixed term of seven or more years.

11. It forbade the use of humiliation, threats and intimidation, and provided that the individual responsible would be liable to imprisonment for not more than three years. It also provided that, if an act of torture damaged the social order, the individual responsible could be prosecuted. Finally, if a prison guard employed corporal punishment, or otherwise ill-treated a prisoner, he was liable to imprisonment for not more than 10 years.

12. Replying to the questions asked about China's reservations to the Convention, he said that several government departments were currently undertaking a comprehensive review of the issue, with particular attention to the views of the other States parties concerning reservations and the impact of reservations on the Committee's work.

13. His Government was in the process of drafting an extradition law for incorporation into the national legislative plan. China had concluded extradition treaties with Thailand and the Russian Federation and was in the process of concluding such an agreement with Belarus. In the matter of extradition between countries with which China had no agreements, it abided by the terms of those international agreements to which it was a party, among them the Convention against Torture.

14. The word "may" in paragraph 24, second sentence, of the report had only one sense: if the Government of China and a foreign Government had agreed on mutually beneficial extradition arrangements, then the extradition would be carried out. China would not prosecute or punish an accused person who had not been extradited. That approach was in conformity with both international principles and general international practice.

15. Over the past three years, the Supreme People's Procuratorate had investigated a total of 1,194 allegations of torture. In 1993, it had investigated 373 cases, an increase of 10 per cent over the number investigated in the previous year; in 1994, 409 cases, an increase of 9.4 per cent; and in 1995, 412 cases, an increase of 0.773 per cent. It might be asked why increasing numbers of cases were being investigated. The answer was, first, that Chinese legislation in the matter of torture had been improved, secondly, that the Supreme People's Procuratorate, abiding strictly by the law, had stepped up the number of investigations, and thirdly, that the Government had mobilized citizens to report cases of torture.

16. The Criminal Procedure Law provided that, although the execution of criminals must be publicly announced, the criminal was not to be paraded through the streets. Moreover, the Special Rules on the Procedure for Handling Criminal Cases of the Supreme People's Court banned parading criminals or subjecting them to other forms of degrading treatment. Although most procuratorates abided by the Rules, criminals were, in fact, occasionally paraded. In such cases, the Supreme People's Court severely censured or penalized the parties responsible.

17. The inhabitants of the Tibet Autonomous Region enjoyed the same political rights and legal protections as all other Chinese citizens. Allegations that torture was widely practised in Tibet stemmed mainly from the Tibetan separatist movement and from NGOs with an anti-China bias. In recent years, his Government had promptly investigated all the queries transmitted to it by United Nations bodies; copies of those reports could be provided to the Committee if its members so desired.

18. In fact, his Government paid close attention to its relations with the United Nations human rights bodies and responded in a serious and responsible way to all communications. The previous year, it had submitted 42 replies to such communications. According to the report of the Special Rapporteur on the question of torture (E/CN.4 1996/35/Add.1), he had sent the Government of China two communications in 1995 and two urgent appeals. The Government had replied to two of them, and was currently investigating the other two.

19. His Government had maintained a cooperative relationship with the International Committee of the Red Cross (ICRC) for many years. Beginning in 1993, it had held talks on a variety of subjects with ICRC which both parties had deemed fruitful. While he could not divulge the substance of those talks, since they had been held on a confidential basis, there were two matters that he could mention: first, the allegation that the Government had refused to allow ICRC to visit prisons in the country was entirely groundless and, secondly, the Government and ICRC remained in continual contact, despite what had been alleged.

20. Replying to a question concerning measures to prevent torture by members of the police, he said that, on China's accession to the Convention in 1988, the Ministry of Public Security had enjoined the People's Police to comply strictly with its provisions. A book entitled The Chinese Police and International Treaties was required reading for all members of the police. In February 1995, China had promulgated the People's Police Act, article 22 of which contained specific provisions prohibiting torture and other forms of

ill-treatment. The penalties for violating those provisions ranged from warning and demerit to demotion, dismissal and criminal prosecution. Where torture resulted in physical injury or death, compensation was awarded to the victim or victim's relatives. In 1995, the procuratorates had investigated 412 cases of alleged torture by State officials to obtain confessions.

21. In reply to a question by Mr. Burns, he said that detention for questioning was a mandatory measure used by the public security organs to deal with crimes committed by habitual offenders of dubious identity and unknown provenance, frequently operating in gangs. The questioning was conducted under the supervision of the procuratorates. Appeals lay to a higher-level public security organ. Owing to imperfections in the legal provisions governing detention for questioning, the National People's Congress had decided to abolish the system as from 1 January 1997.

22. Replying to another question by Mr. Burns, he said that the death penalty could be decreed only for particularly serious crimes. Persons under 18 years of age and pregnant women were not liable to capital punishment. The Criminal Procedure Law provided for a review of capital sentences by inferior courts and further appeals lay to the Supreme People's Court or to a court mandated by that body. No detailed statistical breakdown was available, but 40.34 per cent of all the sentences handed down in 1995 concerned "serious" cases - defined as sentences of five years or more - which included the death sentence.

23. Criminals facing execution had the option, like other citizens, of donating their organs to scientific or medical institutions. The object was, of course, humanitarian and not commercial. Consent of the donors and approval by the administrative, medical and judicial authorities were required. In fact, very few criminals volunteered to become donors.

24. Several members of the Committee had asked about judicial appointments and the independence of the judiciary. Under the Constitution, administrative and procuratorial bodies were appointed by and accountable to standing committees of the National People's Congress at the various levels. The people's courts and procuratorates operated independently of the Communist Party and were in no way susceptible to pressures from administrative organs, social groups or individuals. Judicial personnel possessed a high level of legal expertise and received special training. They were not appointed by the Government or the Party.

25. There were over 3,000 procuratorates in the country. They were divided into four levels: the Supreme People's Procuratorate, provincial procuratorates, including the autonomous regions, local and municipal procuratorates, and grass-roots and county procuratorates. Specialized military and railway procuratorates also existed. Under the leadership of the Supreme People's Procuratorate, the military procuratorates were responsible for investigating crimes committed by members of the armed forces.

26. Mr. Burns had asked about public information activities concerning human rights. The Government had published a compilation of international human rights instruments and an encyclopaedia of human rights. Human rights were

taught in police academies and the training colleges for procurators and judges, with the international human rights instruments figuring prominently in the curriculum.

27. Medical institutes provided training for medical staff in domestic and international law, including the human rights treaties. Strong emphasis was placed on medical ethics. Medical staff was supervised by the Ministry of Health and judicial staff by the Ministry of Justice, without any relationship of subordination.

28. Mr. Dipanda Mouelle had referred to a report published in a legal journal of Yunnan Province, according to which 41 people had died as a result of torture. Such cases would normally be reported to the Ministry of Public Security. He had so far been unable to obtain any information on the matter from that Ministry, but he would pursue his inquiries on returning to China and inform the Committee accordingly.

29. Several questions had been asked about the law of evidence. Under the Criminal Procedure Law, judicial organs dealing with criminal cases at both the investigatory and trial stages were required to base their findings on the evidence and not on confessions. A confession without any other evidence was not sufficient grounds for conviction. Procurators and investigators had to follow legal procedures in collecting evidence and such illegal means as torture, threats, enticement or deceit were outlawed.

30. Mr. Burns and Mr. Zupančič had inquired about criminal compensation. If State organs or officials violated a citizen's rights in the performance of their duties, the aggrieved person could sue for criminal compensation. Under article 15 of the State Compensation Law, compensation could be claimed in the event of detention or arrest without proof of wrongdoing, where a person who had served a sentence was found innocent in a second trial under the judicial supervision process, where a confession was extorted by torture or where firearms or police instruments had been used unlawfully.

31. Article 16 of the same Law provided for compensation in the event of the unlawful sealing, holding, freezing or confiscation of property or where a person who had been subjected to a fine or confiscation of property was acquitted in a second trial under the judicial supervision process.

32. Compensation was usually financial, but property was returned wherever possible. In the event of death, the victim's relatives were compensated. Compensation was also provided for loss of income through detention or for partial or complete incapacitation as a result of physical injury.

33. Replying to a question by Mr. Burns, he said that, under the amended Criminal Procedure Law, the burden of proof would lie with the prosecutor and not with the accused or defending counsel. There was no conflict between articles 20 and 35 of the Criminal Procedure Law, because they dealt with different issues. Article 12 established the presumption of innocence, whereas article 35 laid down the duties of the defence counsel.

34. In response to a question by Mr. Dipanda Mouelle, he explained that, under Chinese prison law, all inmates who were fit to work had to engage in a

productive activity appropriate to their age and sex. The old and the sick were not required to work. The Chinese prison-labour rules were fully in keeping with the Standard Minimum Rules for the Treatment of Prisoners.

35. Inmates were usually held in collective confinement but persons who had violated prison regulations could be placed in solitary confinement, a form of punishment that had to be approved by the prison governor. Prisoners were not handcuffed or put in leg-irons. They were entitled to daily breaks and their cells had to be regularly cleaned and disinfected. Staff members were instructed to talk to inmates in order to raise their consciousness of their problems.

36. Mrs. ILIOPOULOS-STRANGAS said that, because of the lack of a definition of torture consistent with that set forth in the Convention, she would like more information about the system of heads of cells or trusties. In particular, she wondered whether the operation of such a system was not a means of enabling prison staff to evade liability for any ill-treatment of inmates.

37. Mr. WU Jianmin (China) said that no system of heads of cells or trusties existed in China.

The public part of the meeting rose at 5.25 p.m.